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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers | ) | CC Docket No. 95-185 |
| | ) | |
| Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers | ) | CC Docket No. 94- |

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**COMMENTS OF COX ENTERPRISES, INC.**

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## SUMMARY

The Commission's initiative on bill and keep interconnection is potentially the most competitively significant policy advance in many years. Adoption of interim bill and keep holds the promise of establishing wireless service competition with the Local Exchange Carrier ("LEC") local loop monopoly. It is imperative, therefore, that the Commission adopt a federal CMRS policy for interconnection that frees the wireless industry from the inflated rates charged by the LECs for CMRS interconnection. Mandating an interim bill and keep policy for LEC-to-CMRS interconnection will advance the public interest by establishing a fair and economically efficient interconnection framework that promotes competition and recognizes the mutuality of benefits exchanged by co-carriers that terminate traffic for one another. It will also cement significant consumer benefits brought about by lower prices and CMRS providers' ability to offer innovative new services unconstrained by uneconomic interconnection arrangements.

Swift action in this docket is vital if PCS and other CMRS broadband technologies are to become viable local competitors. Eight states already have adopted bill and keep in some form for landline carriers, and the Commission, the only regulatory body with jurisdiction over CMRS and CMRS interconnection arrangements, must recognize the public interest advanced by bill and keep by setting it as a uniform interim national standard.

A national standard for LEC-to-CMRS interconnection will best promote wireless competition because of the interstate nature of wireless services. More importantly, however, a national standard for LEC-to-CMRS interconnection has been mandated by Congress. Congress eliminated state jurisdiction over LEC-to-CMRS interconnection rates

when, as part of the 1993 Budget Act, it amended Section 2(b) and Section 332(c) of the Communications Act. As a result of the 1993 Budget Act, CMRS has been reclassified as a wholly interstate service for jurisdictional purposes and the Commission is the regulatory body authorized by Congress to regulate LEC-to-CMRS interconnection rates under its general Section 201 powers.

The Telecommunications Act of 1996 ("TCA") further reinforces the Commission's authority in this area by expanding the Commission's jurisdiction over interconnection while preserving all the powers the Commission had prior to the passage of the TCA. Consequently, because the TCA expanded the Commission's existing powers over LEC interconnection arrangements, and because the 1993 Budget Act explicitly gave the Commission exclusive authority over all substantive CMRS regulation, the Commission is the only regulatory body that can lawfully establish the rates, terms and conditions of LEC-to-CMRS interconnection.

If the Commission is to meet its Congressional mandate to promote a competitive, national wireless industry, it should not look to old models grown in a monopoly hot-house or tinker with existing usage-based compensation arrangements. An interconnection policy only marginally different from prior common carrier decisions does not advance the immediate goal of fostering competition.

Even in the face of FCC-mandated interconnection, the LECs -- through the exercise of their overwhelming market power -- have imposed exorbitant rates for cellular interconnection and have refused to honor co-carrier mutual compensation requirements. LEC-to-CMRS interconnection is provided today on a "take it or leave it" basis and, because interconnection is essential to the provision of service, cellular carriers have taken what they could get rather than demand what competition requires. As a result, cellular carriers on average are paying fifteen times the incremental cost of interconnection and, in some cases, over seventy-five times the cost of interconnecting to the LEC network. Moreover, they are receiving nothing in return from the LEC for the termination function they provide for LEC customers. This cannot continue if competition between CMRS providers and LECs is to be established.

An access charge model should not be adopted for LEC-to-CMRS interconnection. The nature of the interconnection relationship between a CMRS network and the LEC network has never been and is not now an access charge relationship. Commission precedent confirms that BOC charges on local co-carriers for subsidy elements in the exchange of traffic are inappropriate. In addition, it plainly will not advance competition to require CMRS providers to, in effect, guarantee LEC earnings on embedded plant, or to permit LECs to charge overheads for CMRS interconnection. Rather than adding a "CMRS wing" on the access charge museum, the Commission should construct a new model, consistent with the pro-competitive goals of the Telecommunications Act of 1996.

As described in detail in economic studies using LEC-commissioned data, bill and keep is an economically sound method of interconnection where either: 1) the incremental cost of terminating traffic is so low that there is little difference between a cost-based and zero rate; or 2) traffic is approximately balanced between interconnecting co-carriers. Because wireless interconnection to the local loop already reflects the first of these characteristics and the promise of digital technology will over time achieve the second characteristic, the Commission should embrace an interim bill and keep compensation model for LEC-to-CMRS interconnection.

The Commission should not adopt a uniform but arbitrary and inflated interconnection rate, such as one cent per minute. Unless balanced traffic can be assured -- an impossibility at this stage in the development of wireless local competition -- the setting of an arbitrary exchange rate inflated above the LEC incremental cost could result in the perpetuation of the LEC bottleneck monopoly. In addition, the imposition of fixed, inflated interconnection costs may limit the types of services and flat rate price structures that can be offered by CMRS providers to their customers.

Any attempt to investigate LEC or CMRS interconnection "costs" would be a pointless waste of precious Commission (and industry) resources. Economic surveys and studies commissioned by the LECs provide readily available cost proxies upon which the Commission can rely in establishing a pro-competitive model for LEC-to-CMRS interconnection. Indeed, Congress has recently indicated its preference for the use of deregulatory cost proxies where they can be used to advance the introduction of competition. Moreover, because the cost of developing and implementing software to measure traffic flows between carriers is virtually the same as the cost of providing the interconnectivity, economic theory confirms that examination of such costs is unnecessary and inefficient. Even when variances in traffic levels occur over time, the bill and keep approach is superior to any attempt to develop a set of cost-based interconnection charges.

Bill and keep should be adopted for all traffic terminations, including traffic exchanged at the LEC tandem or at other network meet points. This approach appropriately reflects the mutuality of co-carrier transport and termination obligations.

Any attempt to apply a set of "peak and off-peak" rates in implementing bill and keep is fraught with problems. Adopting peak-load pricing in a LEC-to-CMRS interconnection context, and/or limiting bill and keep to "off-peak" traffic, would contradict existing Commission precedent, unduly delay the issuance of an FCC interconnection order, and hamper the rapid deployment of CMRS networks. The Commission already has identified considerable problems in defining a "peak" for purposes of pricing other telecommunications services. Because different "peaks" occur within different portions of a telecommunications network, subjectively identifying a reasonable peak calling period, even for voice-only wireless services, would create serious economic inefficiencies. It also would be impossible to develop a methodology to separate LEC-to-CMRS interconnection traffic into peak and off-peak categories quickly. Establishing a usage-based peak-load pricing scheme thus would delay competitive delivery of wireless services to customers and create more definitional, implementation and accounting problems than it could possibly solve.

Cox applauds the Commission for issuing this Notice and supports the Commission's tentative conclusion to implement bill and keep for LEC-to-CMRS interconnection. It is essential to implement bill and keep at all LEC and CMRS interconnection points, not just at LEC end offices. Only in this way will bill and keep be a mutual, symmetrical, de-regulatory proposal that can quickly and easily lay the groundwork for local loop competition. The Commission should adopt an interim bill and keep requirement for all LEC-to-CMRS interconnection without delay.

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**COMMENTS OF COX ENTERPRISES, INC.**

Cox Enterprises, Inc. ("Cox") hereby submits its comments in response to the Federal Communications Commission's ("FCC" of "Commission") Notice of Proposed Rulemaking exploring new methods for advancing competition by establishing fair and reasonable LEC-to-CMRS interconnection policies.[1/] Cox commends the Commission for its forward-looking approach to the interconnection of competing networks reflected in the Notice.

Cox's longstanding involvement in the development of Personal Communications Services ("PCS") in large part has been due to PCS' potential to become a competitor to incumbent LEC monopolies.[2/] This pro-competitive potential can be realized if the FCC

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1/ See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185 (released January 11, 1996 ("Notice"). These Comments generally follow the Commission's preferred format contained in the Notice.

2/ In comments filed in the PCS rulemaking in January 1991, Cox observed the potential for "significant competition" between PCS and landline LEC services and encouraged the FCC to adopt policies that fostered this potential. See Comments of Cox Enterprises, Inc., Gen. Docket No. 90-314 (filed October 1, 1990) at 4. Cox was awarded
(continued...)

promptly requires the transformation of current wireless interconnection arrangements into incrementally cost-based arrangements that reflect the true co-carrier status of CMRS operators with LECs.

## I. GENERAL COMMENTS: BILL AND KEEP INTERCONNECTION WILL ADVANCE THE PUBLIC INTEREST GOALS OF CONGRESS AND THE FCC.

### A. Bill and Keep Is The Most Appropriate Compensation Method For LEC-to-CMRS Interconnection.

The Commission's initiative on bill and keep interconnection is potentially the most competitively significant policy advance in many years because it helps lay the groundwork for wireless service competition with the LEC monopoly local loop. As discussed below, bill and keep interconnection has much to recommend it as a fair, easily administered, deregulatory and economically efficient interconnection policy. Bill and keep promotes competition and recognizes the mutuality of the benefits exchanged by co-carriers that terminate traffic for one another.

It is absolutely critical from both a policy and business perspective that the FCC swiftly come to its conclusion on a revised interim LEC-to-CMRS interconnection policy.

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2/ (...continued)
one of only three pioneer preferences for its research and development of broadband PCS. Cox's subsidiary, Cox Communications, Inc., is the licensee of the Los Angeles-San Diego MTA and Cox Communications, Inc. through subsidiaries, is a 15% owner of Sprint Spectrum, which under the licensee name of WirelessCo is the licensee of 29 PCS MTA licenses. Cox Communications, Inc. is also a PCS licensee in the Omaha MTA. Cox, therefore, has a vital interest in the outcome of this proceeding.

Cox and other PCS licensees are in the process of negotiating for interconnection with the incumbent LECs. Without expeditious action by the Commission, there is every expectation, based on past behavior, that the LECs will present to PCS providers as a fait accompli the same highly inflated interconnection rates they imposed on cellular. Maintaining the status quo for interconnection, even for a short period, will significantly delay CMRS from becoming an alternative to monopoly wired networks and deny the Commission immediate access to data that may be useful to its deliberations on long term interconnection policies. Because of its critical nature to new wireless competitors, Cox urges the Commission to make adoption of an interim interconnection policy a top priority.

The FCC's exclusive jurisdiction over CMRS and CMRS-to-LEC interconnection rates was codified in the 1993 Budget Act[3/] and is undisturbed by the Telecommunications Act of 1996.[4/] Moreover, the Commission's tentative conclusion to adopt bill and keep as an interim measure is entirely consistent with the interconnection standards the FCC and states are directed by the TCA to apply to interconnecting competing landline local exchange carriers.[5/] While it is essential that the FCC move forward with its proposal in this proceeding promptly, the exploration of interim and long term compensation methods in the

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3/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §§ 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) ("1993 Budget Act").

4/ Public Law No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. § 251 et. seq. ("TCA").

5/ In this regard, it is notable that the TCA expressly recognizes bill and keep as a proxy for the reciprocal compensation requirements of Section 251.

CMRS-LEC context can and should provide important information for the FCC's more involved proceeding aimed at implementing the landline competition and LEC-to-LEC interconnection provisions of the TCA.

Finally, the FCC must distinguish between the facilities-based, ubiquitous origination and termination of local service that can be provided by a PCS or other CMRS provider and other types of access provided by LECs to their networks. As Congress has already recognized in the TCA, the pricing of telecommunications services for resale, access and unbundled features is a different issue from the economic arrangement for the mutual and reciprocal exchange of traffic entered into between facilities-based networks capable of serving all end users in the same geographic area.[6/] In particular, extension of the subsidy-ridden access charge scheme is not an appropriate framework for establishing a rational scheme for the exchange of local telecommunications traffic between co-carrier or "peer" networks. Indeed, imposing a variant of access charges on the transport and termination of co-carrier traffic would greatly diminish, if not obliterate, the promise of PCS and other CMRS competition with incumbent LECs. Additionally, and for much the same reason, the FCC must firmly reject the notion that a LEC may recover its "revenue requirements" -- its

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6/ Compare TCA § 251(b)(5) (imposing duty on all telecommunications carriers to establish reciprocal compensation agreements for the transport and termination of traffic) and 252(d) (pricing of incumbent LEC termination facilities at incremental cost) with TCA § 251(c)(2) and (c)(3) (imposing duty on incumbent local exchange carriers to provide interconnection with the LECs' network and access to network elements on an unbundled basis and on a cost plus profit basis).

overhead and joint and common costs -- from a competitive interconnector rather than from the end user customers of its services.

### B. The States Have Rejected LEC Attempts to Maintain the Quo on Interconnection and Have Adopted Interim Bill and Keep to Jumpstart Competition.

As recognized by the Commission, a number of state public utility commissions have begun to address the difficult issues surrounding reciprocal compensation between competing providers of telephone service. By a two-thirds margin, the states that have considered mutual compensation have adopted some form of interim bill and keep.[7/] The experience of these state commissions provides ample evidence that, as an interim approach, bill and keep is the compensation mechanism that best advances the public interest in competition.

Recent decisions by state commissions in Oregon and Washington succinctly express the benefits of bill and keep as an interim compensation mechanism between landline competitors:

> The primary advantage of mutual traffic exchange [i.e., bill and keep] as a compensation structure is that, in the near term, it provides a simple and reasonable way for two competing companies to interconnect and terminate each other's calls.[8/]

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7/ Notice at ¶ 60. See also chart attached to these comments summarizing state actions on competitive interconnection. Even those few states that have not embraced an interim bill and keep model for interconnection have found that incremental costs for call termination and transport are miniscule and have declined to adopt access charge forms of interconnection compensation.

8/ Washington Utilities and Transportation Commission v. U.S. West Communications, Inc., Fourth Supplemental Order Rejecting Tariff Filings and Order

(continued...)

> The inherent simplicity of bill and keep makes it a sensible choice as a transitional compensation mechanism until a more comprehensive interconnection rate structure can be implemented.[9/]

State commissions have recognized that an important virtue of bill and keep is that it can be implemented immediately without engaging in lengthy negotiations, tariff review or cost studies. Not only does this approach permit potential LEC competitors to quickly provide service to customers, it also enables regulators to focus their efforts on resolving universal service and other matters before any permanent interconnection structure can be adopted. As the Oregon commission stated:

> Our decision to adopt bill and keep on an interim basis will allow the applicants to enter the local exchange market while the Commission concludes a number of important dockets that will have a major impact on interconnection rates paid by telecommunications providers.[10/]

States also have recognized a further advantage of bill and keep: its administrative simplicity. For example, the Oregon commission relied in part on the fact that bill and keep

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8/ (...continued)
Refiling, Granting Complaints in Part, The Washington Utilities and Transportation Commission, Docket No. UT-941464 (released October 31, 1995) at 29 ("Washington Order").

9/ Application of Electric Lightwave, Inc. for a Certificate of Authority to Provide Telecommunications Services in Oregon, Order, The Public Utility Commission of Oregon, Docket CPI Order No. 96-021 (released January 12, 1996) at 53 ("Oregon Order").

10/ Oregon Order at 53. In addition, the Oregon commission, like many others, recognized that bill and keep can be implemented quickly because it is the predominant compensation mechanism between neighboring LECs. Id.; Washington Order at 29.

eliminates both the costs of monitoring the amount of traffic exchanged as well as the need for monetary settlements between competing telephone companies:

> Interim bill and keep arrangements will also avoid transactions costs associated with cash based compensation methods because interconnecting carriers will not incur the expense of measuring, collecting and auditing traffic. This is advantageous during the initial stages of competition, because measurement costs impose a greater relative burden on new entrants, who must spread the capital cost of such systems over much smaller volumes of traffic.[11/]

Although a handful of states have decided not to use an interim bill and keep approach for the exchange of landline traffic, the primary reason cited for this reluctance is the lack of information regarding the balance of traffic between incumbents and new entrants.[12/] The early information on traffic balance provided by APC in this proceeding should allay any significant concerns on this score for new digital CMRS technology. Moreover, if over the long term traffic patterns turn out to be substantially out of balance, then the Commission will have sufficient time and cause to examine alternatives if necessary.[13/] If the traffic between a LEC and a competitor turns out to be reasonably

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11/ Oregon Order at 53-54.

12/ See, e.g., Application of MFS Intelenet of Maryland for Authority to Provide and Resell Local Exchange and Interexchange Telephone Service, Order No. 72348, The Public Service Commission of Maryland, Case No. 8584 (Phase II)(released December 28, 1995) at 31 n.19 ("Maryland Order").

13/ As noted above, bill and keep is an efficient economic arrangement where either traffic is roughly balanced or the costs of measuring and charging for traffic are close to the incremental cost of terminating traffic. This latter condition is met in interconnection.

balanced, then bill and keep will be effective as both a short term and a long term solution to the issue of mutual compensation.

State commissions also have been adept at highlighting substantial anticompetitive flaws that exist in alternative compensation proposals advanced by LECs. In most states, incumbent LECs have proposed that potential competitors pay the same access charges as IXCs.[14] Connecticut, like many other states, has rejected such an approach:

> While the Department fully understands the historical experience [of] SNET with the access charge structure . . . [it] is of the opinion that an access charge structure would entail a level of financial responsibility on the part of all participants that is not beneficial to the interests of the State in the development of competition.[15]

As an alternative to access charges, some LECs have proposed that competitors pay a rate for termination that includes a purported subsidy to basic residential service or a rate that recovers the fully loaded costs of providing interconnection.[16] The effect of these

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14/ DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network, Decision, State of Connecticut Department of Public Utility Control, Docket No. 94-10-02 (released September 22, 1995) at 57; Illinois Bell Telephone Company, Order, State of Illinois Commerce Commission, Docket No. 94-0096 (released April 7, 1995) at 82-83 ("Illinois Order").

15/ Connecticut Order at 69; see also Illinois Order at 96 (Illinois Bell's proposal "effectively would preclude new entrants from providing essential elements of exchange service in a financially viable manner").

16/ In Maryland, for example, Bell Atlantic first proposed a rate designed to recover existing levels of contribution. When that approach was rejected by the commission, Bell Atlantic proposed a nearly identical rate designed to recover all its existing joint and common costs. That too was rejected by the Commission in favor of a 0.3 cent per minute charge for end office termination, and a 0.5 cent per minute charge for tandem termination.

(continued...)

proposals would be for the LEC to recover all its costs and its current rate of return from competitors even as it loses customers to competing service providers -- a truly anticompetitive result that runs counter to the co-carrier status of the LEC's competitors.[17/]

By a two-to-one margin, those states that have considered competitive interconnection issues have recognized that interim bill and keep is far superior to any compensation methodology based on access charges or a contribution to LEC joint and common costs. Accordingly, for all the reasons relied on by these states, the Commission should require the use of bill and keep as the most fair, reasonable and quickly implemented interim compensation approach for LEC-to-CMRS interconnection.

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16/ (...continued)
Maryland Order at 22.

17/ Such an approach is now foreclosed by the TCA, which contains a set of pricing standards designed to prevent just such a LEC attempt to load irrelevant costs on interconnecting competitors. See 47 U.S.C. § 252(d).

## II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS REQUIRES A BILL AND KEEP ARRANGEMENT.

### A. Compensation Arrangements.

#### 1. Existing Compensation Arrangements Demonstrate the Endurance of LEC Market Power and Should Not Be Continued If the Commission's Goal is Competition.

Ever since the Commission commenced its broadband PCS rulemaking in 1990, emerging wireless technologies (particularly new digital high capacity networks) have been heralded as providing a vehicle for the introduction of competition in the local exchange marketplace. Repeatedly, the FCC has recognized PCS' anticipated contribution to the creation of "wireless local loops" and its fundamental role in establishing competitive alternatives to the landline network.[18] It was over six years ago that Cox began developing cable-based PCS technologies with the goal of challenging the LECs' monopoly and offering the American public a competitive, high quality, full featured, ubiquitous telecommunications service. With the licensing of PCS and concomitant build-out of its PCS facilities, Cox is

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18/ See, e.g., Amendment of the Commission's Rules to Permit Fixed Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, W.T. Docket No. 96-6 (released January 25, 1996) at ¶ 13 ("[W]e always have intended wireless local loop to be part of the family of services that meet our definition of PCS, whether implemented as a mobile or fixed service."); Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, First Report and Order and Second Notice of Proposed Rulemaking, ET Docket No. 94-32 (released February 17, 1995) at ¶ 20 ("It seems likely that ... broadband PCS systems will have sufficient capacity to accommodate wireless local loops.").

poised to bring wireless service competition to the local telecommunications market in its licensed MTAs.

Recognizing the significant monopoly power and historical advantages enjoyed by the LECs, and their success in stonewalling the interconnection demands of cellular operators, Cox early on identified the need for improved interconnection arrangements that would reflect the "co-carrier" concept of reciprocal compensation for traffic termination.[19] Indeed, Cox has long believed that reasonable interconnection arrangements are an essential precondition to competition: CMRS providers forced to pay inflated interconnection charges simply will be precluded from offering wireless service at rates that are competitive with the wireline services offered by incumbent LECs. The creation and enforcement by the FCC of a reasonable reciprocal compensation model is thus required if any inroads in the incumbent LEC monopoly are to be made.[20]

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19/ See, e.g., Reply Comments of Cox Enterprises, Inc., Gen Docket No. 90-314, (filed January 15, 1991) at 18-19 ("PCS promises to provide meaningful competition to landline LEC services . . . . [T]he FCC cannot be complacent about the rates, terms and conditions of PCS interconnection. It is critical to the success of PCS that reasonable cost-based interconnection be an absolute requirement for both intrastate and interstate traffic.").

20/ See "Back to the Future: The FCC and Local Exchange Competition Into the Next Century," filed by Cox Enterprises, Inc. in Docket No. 95-185 (January 31, 1996). Cox presented this White Paper to the Commission as an important historical perspective on the Commission's heroic efforts to introduce competition into the long distance and CPE markets. Cox anticipates that the incumbent LECs will do all in their power to resist establishing economic relationships with competing carriers that will make long term competition viable, and that therefore the Commission's experience in the past provides valuable insight into how to build a more sustainably competitive telecommunications marketplace for the future.

As the Notice recognizes, traditional cellular interconnection arrangements are inherently flawed models for the establishment of economic and reciprocal compensation. Despite the existence of an FCC-mandated co-carrier requirement, the LECs have insisted that one-way payments contained in cellular state interconnection tariffs represent appropriate compensation for interconnection and termination of traffic, and that the contractual arrangements they "negotiated" with cellular operators reflect appropriate interconnection rates.[21/] These rates, however, were the result of uneven bargaining power in negotiations and were unilaterally imposed on cellular operators.[22/]

It is understandable that the Commission might view the cellular interconnection problem with less concern because cellular was never viewed as a potential competitor to the local loop.[23/] Analog cellular operators were perceived as lacking the requisite bulk capacity

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21/ See, e.g., Comments of Bell Atlantic, CC Docket No. 94-54 (filed September 12, 1994) at 13 ("[T]he current regulatory framework provided sufficient protection to cellular carriers and thus should be sufficient for all CMRS carriers. . . ."); Comments of Southwestern Bell, CC Docket No. 94-54 (filed September 12, 1994) at 63 ("cellular carriers are generally satisfied with the general system of negotiated agreements"); but see Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Services, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5454 (1994) ("CMRS Interconnection Notice") at ¶ 110 (recognizing that commenters have expressed dissatisfaction with the current system of good faith negotiations between CMRS and LECs for interconnection).

22/ The LECs have consistently defended these practices, arguing that their affiliates agreed to the rates for interconnection and that, therefore, the imposition of these self-serving "deals" is required under the Commission's nondiscrimination requirements. Reform of these anticompetitive arrangements is long overdue.

23/ See, e.g., Cellular Communications Systems, 86 FCC 2d 469, 484 (1981), recon. 89 FCC 2d 58 (1981), further recon. 90 FCC 2d 571 (1982), appeal dismissed sub

(continued...)

to compete with landline services.[24/] Moreover, because half the spectrum allocated to cellular was set aside for LECs, LEC cellular affiliates would never challenge their corporate parents by seeking to compete for local service customers. As a result, the LECs have enjoyed nearly unfettered discretion to impose interconnection charges far in excess of cost and have failed completely to acknowledge the co-carrier status of cellular operators.[25/]

Notably, there is a stunning gap between the actual cost to the LECs of transporting and terminating cellular traffic and current cellular interconnection rates. Cox has placed in the record its economist's report which, using the LECs' own data, reveals that the average incremental cost of call termination, expressed on a per minute basis, is 0.20 cents per minute.[26/] The average charge for cellular interconnection is currently 3 cents per minute.[27/]

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23/ (...continued)
nom. United States v. FCC, No. 82-1526 (D.C. Cir. March 3, 1993) ("Our primary reason for questioning wireline operation of cellular systems at this late date was our concern that cellular technology might have developed the potential to be competitive with local exchange service . . . . From our review of the record, . . ., there appears to be a consensus that our concern was unfounded.").

24/ Id. ("[T]he size of the spectrum allocated will limit the number of users of a cellular system, which a landline system can expand indefinitely.").

25/ Although the FCC's Radio Common Carrier ("RCC") interconnection proceedings in the 1980s delineated basic LEC interconnection obligations, including good faith negotiation and a requirement for cost-based, reasonable interconnection, this framework has been unable to address effectively abusive LEC interconnection pricing practices.

26/ The 0.20 of a cent cost calculation comes from a 1995 survey authored by Dr. Gerald Brock, Director of the Graduate Telecommunication Program, George Washington University, on behalf of Cox Enterprises, Inc. See "Incremental Cost of Local Usage," Gerald W. Brock, filed in CC Docket 94-54 on March 21, 1995. Dr. Brock's survey was
(continued...)

Maximum cellular interconnection rates are significantly higher.[28] This means that cellular operators today are, on average, paying fifteen times the cost of their interconnection. Applying the highest reported rate for interconnection, some cellular operators are paying more than seventy-five (75) times the average cost of interconnection at 16.4 cents per minute. In contrast, no LEC, to Cox's knowledge, pays anything to the interconnecting cellular provider for its termination of landline LEC traffic.

It is time to break from this inherently anticompetitive compensation policy. If PCS and other CMRS providers are not freed from the interconnection swamp in which the competitive potential of cellular service has been mired for the past decade, the FCC could well destroy any real prospect for wireless services to compete against landline services and the price of wireless service will continue to be inordinately high. Indeed, simple math proves that CMRS providers will be unable to provide a competitive service if they are required to pay LECs 3 cents for every minute of interconnection. For example, assume that

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26/ (...continued)
derived from LEC data contained in a 1990 study by The Rand Corporation. See Mitchell Bridger, Incremental Costs of Telephone Access and Local Use (Santa Monica, Calif: The Rand Corporation, 1990). It is important to note, however, while a usage charge is not an economically efficient method of charging for interconnection, it is used by Brock for the illustrative purpose of comparing current LEC rates to their average actual costs.

27/ Based on a national survey of LEC interconnection rates, Malarkey-Taylor Associates, Inc., an economic and management consulting group based in Washington, D.C., has determined that the average per minute interconnection rate is approximately 3 cents per minute. See Interconnection Compensation Perspective, Malarkey-Taylor handout prepared for PCIA Leg/Reg/WINC Meeting, February 8, 1996.

28/ The Malarkey-Taylor study reveals a maximum per minute charge of 16.4 cents for LEC interconnection under at least one interconnection arrangement.

residential subscribers use 400 minutes of POTS each month, on average, and that the average local telephone bill for this service is about $12.00 per month. If CMRS providers must continue to pay a 3 cent per minute interconnection rate to the LEC, they will have to charge their subscribers $12.00 per month just to cover their interconnection costs. Accordingly, a new interconnection policy, such as bill and keep on an interim basis, is required to implement a new, more pro-competitive relationship and to provide important cost savings to American consumers.[29/]

The Commission initially considered whether PCS interconnection should proceed on the same "negotiated" basis as cellular.[30/] The Notice recognizes, however, what Cox has said all along: LECs have no incentive to, nor do they, engage in serious interconnection negotiations with CMRS providers.[31/] Because interconnection is essential, cellular carriers

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29/ Even in an instance where CMRS does not substitute for, but augments, wired local service alternatives, the availability of reciprocal interconnection arrangements such as bill and keep will result in substantial consumer savings.

30/ See CMRS Interconnection Notice at 5453 ("Because of concerns raised by some commenters, the Commission is committed to explore whether interconnection agreements could continue to be established on the basis of individually negotiated contracts. . . ."); see also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1498-1499 (1994) ("[O]ur experience with cellular interconnection issues and our review of the comments have convinced us that our current system of individually negotiated contracts between LECs and Part 22 providers warrants review and possible revision.").

31/ See Notice at ¶ 13 (recognizing that LECs have failed to abide by the Commission's mutual compensation policies and have abused their monopoly power by requiring, in some instances, that CMRS providers pay the LEC for calls they terminate for the LEC on their own networks).

have taken what they could get rather than receive what competition requires. This situation will remain unchanged until the FCC acts to implement its pro-competition agenda.

Cox California's PCS interconnection "negotiations" with Pacific Bell have been predictably disappointing. As the FCC's own ex parte records reflect, Pacific Bell's idea of a negotiation is to present Pacific Bell's interconnection agreement with its affiliate, Pacific Bell Mobile Services, as the "deal" Pacific Bell is willing to strike with Cox.[32/] There is no reciprocal compensation reflected in the interconnection agreement, nor do the rates Pacific Bell intends to charge reflect anything approaching its incremental costs. The "take it or leave it" approach to interconnection "negotiations" plainly allows Pacific Bell to have a significant impact on the price of its competitor's service and permits Pacific Bell to stave off any serious competition from CMRS providers (like Cox) aimed at its bottleneck monopoly.[33/]

### 2. General Pricing Principles for Interconnection Should Aim to Maximize the Pro-Competitive Benefits of Bill and Keep.

In a truly competitive market, pricing reflects the costs of a service. Interconnection between overlapping facilities-based networks, however, cannot properly be characterized as a "service" sold by one interconnector to another. Both carriers benefit from the ability to

32/ See Ex Parte Letter, GEN Docket No. 90-314 filed by Pacific Telesis on February 5, 1996 (confirming disclosure of Pacific Bell - Pacific Bell Mobile Services interconnection agreement to Cox California PCS, Inc.).

33/ It is indeed ironic that Pacific Bell has been required by the State of California to use bill and keep for interconnection of landline competitors, but Cox's interstate PCS operations are prevented from enjoying the obvious benefits of that arrangement.